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From: Chris Powell [mailto:CPowell@JournalInquirer.com]
Sent: Tuesday, May 20, 2003 2:28 PM
To: Linda Senecal; Mania Baghdadi
Subject: Presentation by Journal Inquirer

May 19, 2003

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Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in a Non-Restricted Proceeding
Initial Regulatory Flexibility Analysis for 2002 Biennial Review:
Review of Broadcast Ownership Rules (MB Dkt. No. 02-277)
(also MM Dkt. No. 01-235)

Dear Secretary Dortch:

I am the managing editor of the Journal Inquirer in Manchester, Conn. I appeared before the commission at its hearing on broadcast ownership rules in Richmond, Va., on February 27, 2003. The Journal Inquirer is a daily newspaper with fewer than 500 employees, making it a "small entity" under applicable FCC/Small Business Administration standards.

I submit this additional comment letter, on the Journal Inquirer's behalf, as to the above-captioned commission proceeding, as well as the related proceeding initiated by the FCC in 2001 specifically regarding the newspaper/broadcast cross-ownership rule.

At the hearing in Richmond I explained that our newspaper strongly opposes any changes in the commission's newspaper/broadcast cross-ownership rule and policies. In fact, we wish that the commission would enforce existing requirements more zealously and ensure that media conglomerates comply with them.

Further, as the representative of a small newspaper in a community threatened by what amounts to a media takeover by a conglomerate, Tribune Co., we have grave concerns about how significant changes to the entire suite of commission cross-ownership rules might affect not only the Journal Inquirer's business but also competition, diversity, and localism in the Hartford-area media market generally.[

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When I spoke to the commission in Richmond, I could identify the threat Tribune Co. was posing in the Hartford area and Tribune's efforts to dominate that media market. But I could not then and cannot now address any specifics of how the threat might be fully realized in the context of specific proposals for changes to the commission's cross-ownership rules. I expect that other small entities subject to commission regulation are facing the same difficulties in responding to the commisison's notices of proposed rule making. Further, and as one example,

the regulated community can comment fully and adequately only once the commission's intellectual exercise of crafting metrics to evaluate cross-ownership is translated into actual proposals that can be applied to specific situations.

We at the Journal Inquirer recently learned that we are not alone in our concerns. On April 9, 2003, Thomas M. Sullivan, chief counsel for advocacy for the U.S. Small Business Administration, submitted an *ex parte* letter to you and the other FCC commissioners in which he concluded that the above-captioned rule-making proceedings violate the Regulatory Flexibility Act and the Administrative Procedure Act. As Sullivan explained, the FCC's notices of proposed rule making in these matters do not specify the changes to the cross-ownership rules the commission is proposing.

The Journal Inquirer agrees with Sullivan, who wrote: "This style of rule making is very costly to the telecommunications industry. By issuing an NPRM that lacks specific proposals, the FCC creates uncertainty in the industry, resulting in thousands of comments that, at best, can only speculate as to what action the FCC may take and the potential impacts."

We are also troubled that that such flawed rule making appears to represent the commission's long-standing practice. We should be learning about what the FCC intends to do from the Federal Register rather than from newspaper reports based on anonymous sources.

We appreciate Sullivan's efforts to express our concerns in the applicable legal context, and we incorporate his concerns and recommendations as our own. Sullivan has rightfully called for the FCC to engage in more specific rule making once it has definite proposals. From our perspective, Sullivan really is serving his Senate-confirmed role as "watchdog" for the compliance of government agencies with the Regulatory Flexibility Act and related legal requirements, and he should be commended.

For his part, President Bush repeatedly and forcefully has recognized the importance of small businesses and the economic and cultural diversity they provide to our nation. In fact, as Sullivan's letter explained, the president issued an executive order in August 2002 that strengthened the Office of Advocacy's hand in ensuring compliance with the Regulatory Flexibility Act and in protecting small businesses from heavy-handed government regulation generally. Indeed, one of the first laws passed when the Republican Party took control of

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Congress was a law (made part of the Contract with America Advancement Act of 1996) that made agency violations of the Regulatory Flexibility Act actionable in court.

For these reasons, the Journal Inquirer urges the commission to follow the course set forth by Chief Counsel Sullivan. That approach is not only fair but also complies with important substantive and procedural requirements protecting administrative processes in general and small businesses, such as the Journal Inquirer, in particular.

Thank you for your attention to this matter and for your efforts to ensure that the above-captioned rule-making proceedings will be conducted fairly and according to the law. We look forward to providing constructive and more detailed comments to a Further Notice of Proposed Rulemaking setting forth specifically how the commission is planning to amend its cross-ownership rules and policies and its newspaper/broadcast cross-ownership rules and policies in particular.

Sincerely,

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